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Serial No. 10/787,429
67067-012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph D. Rippolone

Serial No.: 10/787,429

Examiner: Gilbert, William V.

Filed: 2/26/2004

Group Art Unit: 3635

Title: FORCED AIR HEATED GUTTER SYSTEM

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed May 11, 2009. Appellant will respond to only a few select points, without repeating all of the arguments presented in the Appeal Brief. The following remarks are made in supplement to the Appeal Brief.

Argument

A. §102(b) Rejection Over Bortugno.

Regarding claim 12, the Examiner interprets the two elements 16 and element 23 from Bortugno as the claimed two spaced apart side walls and the bottom wall, respectively. Claim 12 recites "wherein said gutter wall includes two spaced apart side walls and a bottom wall that define the liquid passage." However, the two elements 16 are separate from element 23. Therefore, the elements 16 and 23 can not hold a liquid by themselves and thus, do not define a liquid passage.

Additionally, the Examiner argues that even though members 16 and 23 may be separate, it has no bearing in defining a "continuous cross section". [Examiner's Answer page 10; lines 7-

8]. However, claim 12 requires “a gutter wall having a continuous cross section separating the liquid passage and the air flow passage”. Since the air flow passage defined by the elements 23 and 24 is separate from the liquid flow passage defined by elements 15 and 16, the Bortugno reference does not meet the limitations of the claim. For these reasons, the rejection is improper and must be reversed.

B. 103(a) rejection over Bortugno

Regarding claim 5, the Examiner argues that the Appellant has not provided evidence to note that the non-linear configuration is significant. [Examiner’s Answer page 11; lines 16-18]. However, the Appellant has pointed out to the Examiner that the non-linear portions allow the inlet and outlet air flow passages to flow adjacent each other to increase the heat transfer from the air flow passages to the gutter section. [Appeal Brief page 7; lines 8-12].

Additionally, the Examiner argues that “[t]he system in Bortugno can be shaped with nonlinear portions to conform to the structure that the system is being attached.” [Examiner’s Answer page 11; lines 18-20]. Whether the Examiner thinks the Bortugno reference “can be shaped” is inconsequential. The Examiner must have an evidentiary basis to support that this is known and predictable. The Examiner’s unsupported statements do not amount to supporting evidence. For these reasons, the rejection is improper and must be reversed.

C. §103(a) Rejection Over Bortugno in View of Bernardi.

The Examiner argues that since the heating unit 7 from Bernardi could be a central heating system that the system therefore uses hot air. [Examiner’s Answer page 13; lines 6-10]. However, Bernardi discloses using heating units 7, such as a boiler or a water heater, for supplying steam or hot water to the pipes. [Bernardi col. 2; lines 37-39]. Bernardi does not disclose using a central heating system that supplies hot air, but a system that supply water in either liquid or vapor form. Therefore, the combination of Bortugno and Bernardi is improper because exhausting water through the exhaust ports 29 of Bortugno would likely result in undesirable icing in cold weather. Additionally, the exhaust ports 29 from Bortugno would

eliminate the need for a return flow path as taught by Bernardi. For these reasons, the rejection is improper and must be reversed.

Closing

For the reasons set forth above, final rejection of claims 2, 3, 5-10, and 12-16 is improper and must be reversed.

Respectfully submitted,

CARLSON, GASKEY & OLDS

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